

### REMARKS

Claims 1-11, 13-20, 39 and 40 were pending in this application. By this response, Applicant amends claims 38 and 39. As a result, claims 1-11, 13-20, 39, and 40 are pending with claims 1, 38 and 39 being independent claims. Claim 38 is withdrawn in the present application, but upon allowance of linking claim 39, is expected to be reinstated. No new matter has been added.

#### I. Interview

Initially, Applicants' representative, Walt Norfleet, thanks the Examiner for her courtesy in conducting a telephone interview on March 15, 2007. During the interview, the Examiner agreed that Caspari (US 4,890,615) does not show a cutter adapted to cut suture wire so as to free a wire loop suture from suture wire remaining in the instrument, as recited by independent claim 1. Rather, Caspari only discloses a tubular needle 56 with a cutting tip 58 to penetrate tissue, and a separate pair of microsurgical scissors to cut the end of suture material. The Examiner also agreed to consider amendments to claim 39 that recite that the suture wire initially moves away from any portions of the instrument.

#### II. Independent Claim 1 Is Patentable

Claims 1-7, 10, 16 and 18 are rejected as being anticipated by Caspari. Claims 8, 9, 11, 13, 14, 15, 17 and 20 are rejected as being unpatentable over Caspari in view of Schulken (U.S. 5,499,990). Claim 19 is rejected as being unpatentable over Caspari in view of Kortenbach (U.S. 5,814,054).

Claim 1 defines a suturing instrument that comprises, among other features, a cutter that is adapted to cut suture wire so as to free a wire loop suture from suture wire remaining in the instrument and to bend each end of the wire loop suture around one of a first island and a second island.

Caspari discloses a suturing instrument that includes a hollow needle for penetrating tissue to be sutured while the tissue is clamped between two jaws. Suture material is then passed

through the needle and a knot is tied in the suture material, externally of the body. The knot is then moved back into the body at a position adjacent the tissue (Abstract). Caspari describes that the tubular needle 56 may have a beveled cutting tip for penetrating tissue to be sutured. (Col. 3, lines 61-65). Nowhere does Caspari teach or suggest that the cutting tip could cut suture material. Instead, Caspari discloses that microsurgical scissors, which are separate from the suturing instrument, are used to cut the ends of suture material. (Col. 5, lines 51-54).

As discussed during the interview, Caspari fails to disclose a cutter of the instrument that is adapted to cut suture wire. Independent claim 1 distinguishes Caspari at least in this regard. Each of claims 2-11 and 13-20 depend from claim 1 and are patentable for at least the same reasons. Accordingly, withdrawal of this rejection is respectfully requested.

### III. Independent Claim 39 Is Patentable

Claims 39 and 40 are rejected as being anticipated by Schulken.

Independent claim 39, as amended, defines a suturing instrument that comprises, among other features, a means for bending suture wire in a curved portion of a first channel such that upon exiting a distal end of the instrument, a leading end of the suture wire initially moves away from any portions of the instrument and follows a curved trajectory to return to the distal end to form a wire loop suture.

Schulken is directed to a suturing instrument that has both a stationary jaw and a movable jaw located at a distal end of the instrument. As shown in FIG. 3A and as is discussed generally at column 4, lines 17-31, suture wire is formed into a spiral shape as the suture wire leaves a guide channel of the stationary jaw and moves towards the movable jaw. In this respect, any means for bending suture wire of Schulken does not cause a leading end of suture wire to initially move away from any portions of the instrument and follow a curved trajectory to return to the distal end. Rather, in Schulken, the leading end of the suture wire is always directed to either the movable jaw or the stationary jaw. Independent claim 39 distinguishes Schulken in at least this regard. Claim 40 depends from claim 39 and is patentable for at least the same reasons. Accordingly, withdrawal of this rejection is respectfully requested.

IV. Non-Statutory Obviousness-Type Double Patenting Rejections Are Overcome

Claims 1-11 and 13-20 stand provisionally rejected on the grounds of non-statutory obviousness-type double patenting as being unpatentable over claims 1-24 of co-pending application number 10/352,600. Claims 1-11 and 13-20 also stand rejected on the grounds of non-statutory obviousness-type double patenting as being unpatentable over claims 1-33 of U.S. Patent No. 7,131,979 and over claims 1-23 of U.S. Patent No. 6,511,489.

Applicant submits herewith Terminal Disclaimers to overcome each of the above-identified rejections and provisional rejections. Accordingly, withdrawal of these rejections is respectfully requested.


**CONCLUSION**

In view of the above amendment, applicant believes the pending application is in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicants hereby request any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Dated: March 29, 2007

Respectfully submitted,

By   
Walt Norfleet, Registration No. 52,078  
WOLF, GREENFIELD & SACKS, P.C.  
Federal Reserve Plaza  
600 Atlantic Avenue  
Boston, Massachusetts 02210-2206  
(617) 646-8000

**DD 03/29/07**